

D.P.U. 96-25

Petition of Massachusetts Electric Company and Nantucket Electric Company, pursuant to General Laws Chapter 164, §§ 76 and 94, and 220 C.M.R. §§ 1.00 et seq., for review of its electric industry restructuring proposal.

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I. INTRODUCTION

This Order addresses the Offer of Settlement ("Settlement") of electric industry restructuring issues for Massachusetts Electric Company ("MECo") filed with the Department of Public Utilities ("Department") by MECo and certain other parties in the above-referenced proceeding. This Order presents the procedural background, description of the Settlement and amendments, the comments on the Settlement, the Department's standard of review, and our analysis and findings.

II. PROCEDURAL BACKGROUND

In Electric Industry Restructuring, D.P.U. 95-30, at 47 (1995), the Department required each Massachusetts electric company to submit a proposal that includes, among other things, a plan (including any negotiated resolution) for moving from the current regulated industry structure to a competitive generation market and to increased customer choice. On February 16, 1996, MECo submitted its restructuring proposal, and the Department docketed the filing as D.P.U. 96-25.¹ On October 1, 1996, MECo, Nantucket Electric Company ("Nantucket") (MECo and Nantucket are collectively referred to as "MECo" or "Company") and New England Power Company ("NEP") submitted a Settlement of the Company's restructuring

¹ On March 15, 1996, the Department opened a generic rulemaking to guide the development and evaluation of individual electric company restructuring plans. Electric Industry Restructuring, D.P.U. 96-100 (1996) ("D.P.U. 96-100"). On May 1, 1996, the Department issued proposed rules. D.P.U. 96-100, Explanatory Statement and Proposed Rules, May 1, 1996. On December 30, 1996, the Department, in the same docket, issued its plan for a restructured electric industry, including Model Rules and a legislative proposal. D.P.U. 96-100, Electric Industry Restructuring Plan, December 30, 1996. On February 24, 1997, the Governor filed legislation to establish a statutory framework for restructuring the electric industry, and to provide the Department with express authority to enact the proposed Model Rules.

proposal, along with a Joint Motion for Approval.²

² The Settlement was signed by the Company, American National Power, American Tractebel-CRSS, Inc., the Attorney General, Conservation Law Foundation, KCS Power Marketing, Inc., Irving Bernstein and Pearl Noorigian (collectively, the "Low-Income Intervenors"), Massachusetts Community Action Directors Association, Massachusetts Division of Energy Resources, Massachusetts Energy Directors Association, Massachusetts High Technology Council, Northeast Energy and Commerce Association, Northeast Energy Efficiency Council Inc., The Energy Consortium, Union of Concerned Scientists, and U.S. Generating Company.

Pursuant to notice duly issued, the Department received two rounds of public comments,³ and conducted a public hearing on October 30, 1996. The Department conducted a procedural conference on November 7, 1996,⁴ and six evidentiary hearings between November

³ The Department received initial comments on October 29, 1996 from Alternate Power Source, Inc., Associated Industries of Massachusetts, Center for Energy and Economic Development, Competitive Power Coalition, Massachusetts Department of Environmental Protection, Massachusetts Division of Energy Resources, Enron Capital & Trade Resources, Federated Department Stores, the Flatley Company, Intercontinental Energy Corporation, Integrated Waste Services Association, IRATE, Inc., Ken's Foods, Massachusetts Alliance of Utility Unions, MECo, Northeast Hydroelectric, Inc., Retailers Association of Massachusetts, Frank Saccoccio, Town of Erving, Town of Northborough, Utility Workers Union of America, AFL-CIO and Local 464, Western Massachusetts Electric Company, Western Massachusetts Industrial Customer Group, Wheeled Electric Power Company, and Xenergy, Inc.

Reply comments were received on November 4, 1996 from the Attorney General, Conservation Law Foundation, Massachusetts Department of Environmental Protection, Massachusetts Division of Energy Resources, Enova Energy, Inc., MECo, Massachusetts Public Interest Research Group, Union of Concerned Scientists, and Western Massachusetts Industrial Customer Group.

⁴ The Department received a Notice of Intervention from the Attorney General, and at the November 7, 1996 Procedural Conference, granted the Petitions to Intervene or Participate from Alternate Power Source, Inc., American National Power, Inc., American Tractebel-CRSS, Inc., Associated Industries of Massachusetts, Boston Edison Company, Citizen Action, Center for Energy and Economic Development, Cambridge Electric Light Company and Commonwealth Electric Company, Competitive Power Coalition, Conservation Law Foundation, the Eastern Edison Company, Enova Energy, Inc., Enron Capital & Trade Resources, Federated Department Stores, Financial Management Group, Fitchburg Gas and Electric Light Company, Freedom Energy Company, L.L.C., Green Mountain Energy Partners, L.L.C., Intercontinental Energy Corporation, IRATE, Inc., KCS Power Marketing, Inc., Koch Power Services, Inc., the Low-Income Intervenors, the Massachusetts Alliance of Utility Unions, Massachusetts Department of Environmental Protection, Massachusetts Division of Energy Resources, Massachusetts Municipal Light Plants, Massachusetts Municipal Wholesale Electric Company, Massachusetts Public Interest Research Group, Northeast Energy and Commerce Association, Northeast Energy Efficiency Council, TexPar Energy, Inc., The Energy Consortium, Union of Concerned Scientists, Utility Workers

21 and December 11, 1996.

In support of the Settlement, the Company presented the testimony of Richard Sergel, senior vice-president of New England Electric System ("NEES") and chairman of the Company; Michael E. Jesanis, treasurer of NEES and the Company; Peter Zschokke, manager of retail rate design for NEP; Jonathan B. Lowell, manager of integrated resource planning for NEP; and Andrew H. Aitken, director of environmental and safety matters for NEP. The Attorney General and the Division of Energy Resources ("DOER") presented the testimony of Susan E. Coakley, technical director of the Boston Edison Company Demand-Side Management Settlement Board. The Conservation Law Foundation ("CLF") presented the testimony of Stephen G. Brick, policy and technical coordinator for the Clean Air Task Force; and Joseph M. Chaisson, technical director of CLF's energy project. The Union of Concerned Scientists ("UCS") presented the testimony of Alan J. Noguee, senior energy analyst with UCS.

In opposition to the Settlement, the Center for Energy and Economic Development

Union of America, AFL-CIO and Local 464, Western Massachusetts Electric Company, Wheeled Electric Power Company, and Xenergy, Inc. The Department also granted the late-filed petitions to intervene of AllEnergy Marketing Company, Environmental Futures, New Energy Ventures, and Wheelabrator Environmental Systems, Inc.

("CEED") presented the testimony of Thomas A. Hewson, Jr., a consultant with Energy Ventures Analysis, Inc. The Utility Workers Union of America ("UWUA"), Local 464 of the UWUA, and the Massachusetts Alliance of Utility Unions (collectively "Unions") presented the testimony of Michael D. Dirmeier, a principal of Georgetown Consulting Group, Inc.; and Edward G. Collins, an international representative with the International Brotherhood of Electrical Workers. Wheeled Electric Power Company ("WEPCo") presented the testimony of Dr. John O'Brien, president of WEPCo; and Ian Goodman, president of the Goodman Group, Ltd. Wheelabrator Environmental Systems, Inc. ("Wheelabrator") presented the testimony of Lawrence W. Plitch, vice-president and general counsel of Wheelabrator, and William C. Sheehan, president of Financial Management Group.

The evidentiary record consists of 140 exhibits and the responses to 26 record requests. Pursuant to the procedural schedule, the Department received initial briefs on December 17, 1996 and reply briefs on December 23, 1996.⁵

⁵ Initial briefs were submitted by the Associated Industries of Massachusetts, the Attorney

General, Boston Edison Company, CEED, Competitive Power Coalition of New England, Inc., CLF, DOER, Enron Capital & Trade Resources, Enova Energy, Federated Department Stores, IRATE, Inc., MECo, New Energy Ventures, Inc., Shrewsbury Electric Light Department, UCS, Unions, Wheelabrator, WEPCo, and Xenergy, Inc.

Reply briefs were submitted by Alternate Power Systems, Associated Industries of Massachusetts, the Attorney General, Boston Edison Company, CEED, Competitive Power Coalition of New England, Inc., CLF, DOER, Enron Capital & Trade Resources, Enova Energy, Federated Department Stores, Freedom Energy, MECo, Unions, Wheelabrator, WEPCo, UCS, and Xenergy, Inc.

On January 10, 1997, the Department issued a letter stating that most of the Settlement provisions are consistent with the Department's electric industry restructuring goal and principles and our proposed restructuring plan, and represent a reasonable resolution of many restructuring issues. However, the Department stated that resolution of specific concerns with respect to the proposed unbundling of rates and financing provisions would be necessary before the Department would approve the Settlement.⁶ On January 14, 1997, the Company submitted amendments to the Settlement intended to address the Department's concerns ("Amended Settlement"). Comments on the Amended Settlement were submitted on January 21, 1997 by the Competitive Power Coalition ("CPC"), Low-Income Intervenors, Northeast Energy and

⁶ The Department stated that the retail delivery rates should reflect unbundled transmission and distribution rates, and that the financing provisions are premature. January 10, 1997 Letter at 14. The Department provided an opportunity for amendment of the Settlement and comment on any amendments.

Commerce Association ("NECA"), Unions, and Wheelabrator.⁷

⁷ On January 22, 1997, Local 464 of the UWUA submitted additional comments in opposition to the Settlement.

On February 13, 1997, the Company submitted modifications to the Amended Settlement ("Revised Amended Settlement") intended to address concerns of members of the Massachusetts State Senate with regard to the effect of the Amended Settlement on future legislative actions in restructuring electric utilities in Massachusetts.⁸ In order to provide an opportunity to comment on the Revised Amended Settlement, on February 14, 1997, the Department allowed comments to be filed by February 21, 1997. On February 25, 1997, Local 464 of the UWUA submitted a late-filed objection to the February 13, 1997 modifications to the Amended Settlement.

III. DESCRIPTION OF THE REVISED AMENDED SETTLEMENT⁹

The Revised Amended Settlement represents a comprehensive Company-specific resolution of issues relating to electric industry restructuring including (1) the unbundling of the Company's existing tariffs, (2) customer choice, with standard offer and universal service provisions, (3) near-term rate reduction, (4) low-income customer protections, (5) recovery of

⁸ On February 11, 1997, certain members of the Massachusetts State Senate raised concerns regarding the consequences of approving the Amended Settlement before enactment of restructuring legislation. See February 11, 1997 Letter from Senator Stan Rosenberg, Chairman, Senate Committee on Ways and Means; Senator Michael W. Morrissey, Senate Chair, Joint Committee on Government Regulation; and Senator Robert A. Bernstein, Senate Chair, Joint Committee on Energy. See also February 11, 1997 Letter from Senator John D. O'Brien, Senate Chair, Joint Committee on Electric Utility Restructuring.

⁹ The Amended Settlement, but for the changes to the rate unbundling and financing provisions, is identical to the Settlement. The Revised Amended Settlement, but for the modifications on pages 22, 34, and 36, is identical to the Amended Settlement. The Department marks the Amended Settlement as Exhibit MECo-9 and the Revised Amended Settlement as Exhibit MECo-10, and on its own motion, makes the Amended Settlement and Revised Amended Settlement exhibits in this proceeding.

stranded costs,¹⁰ (6) divestiture of generating facilities, (7) improved environmental performance, and (8) continued funding for demand-side management ("DSM") programs.

¹⁰ Under its existing service agreement, MECo is an all-requirements contract customer of NEP. Recovery of stranded costs would be accomplished through an access charge to recover a contract termination charge payable to NEP (Exh. MECo-10, at 4-5).

The Revised Amended Settlement proposes to implement unbundled rates for MECo's customers prior to the date that retail customer choice in a competitive generation market becomes available to customers of investor-owned electric companies in Massachusetts (the "retail access date") (Exh. MECo-10, at 5-6).¹¹ MECo's unbundled rates would be divided into delivery service charges and energy service charges (id.). The delivery service charges cover distribution costs, including conservation cost factors, an allowance for transmission costs and recovery of fixed costs associated with NEP's purchased power expense currently recovered under the existing tariff (id.). The energy service charges would include MECo's fuel clause plus an allowance equal to the variable energy costs currently recovered (id.). MECo would roll a Purchased Power Cost Adjustment ("PPCA") factor, with a reconciliation adjustment, into

¹¹ Under the Revised Amended Settlement, the retail access date would be the later of January 1, 1998, or the date when retail access is made available to all customers of investor-owned electric companies in Massachusetts, provided that, as of January 1, 1998, MECo could seek Department approval to implement retail access for its customers prior to the date when retail access is made available to customers of other

base rates and eliminate future PPCA adjustments (id.). The fuel clause adjustment would continue as a reconciling adjustment until the retail access date (id.).

investor-owned electric companies in Massachusetts (Exh. MCo-10, at 22).

On the retail access date, the Company would implement retail delivery tariffs (id. at 7). The retail delivery rates would include four components: (1) the distribution charges,¹² including performance standards for reliability and customer satisfaction,¹³ that would be effective until January 1, 2001;¹⁴ (2) transmission charges that recover, on a reconciling basis, transmission service provided by NEP,¹⁵ and any other charges billed to MECo for transmission service; (3) an access charge designed to recover costs associated with termination of the all-requirements contract; and (4) an energy charge for the generation component (id. at 7-8). In response to the concerns raised in the Department's January 10, 1997 letter, the retail delivery tariffs of the Amended Settlement unbundle the transmission charge from the distribution and access charges,¹⁶ and provide for a separate transmission service cost adjustment, which does

¹² The Revised Amended Settlement provides that, effective January 1, 2000, MECo would file a proposal with the Department to unbundle distribution services that can be provided competitively, without impairing system reliability or other system benefits (Exh. MECo-10, at 36).

¹³ The Company will credit customers' bills when the duration of an outage, on average, exceeds 105 minutes or level of customer satisfaction, as determined by customer surveys, is below 85 percent (Exh. MECo-1, vol. 3, at 38-39).

¹⁴ MECo would file with the Department to adjust distribution rates to recover or refund revenues to adjust for tax law and accounting changes, and to assure that the Company's annual return on equity associated with distribution operations averaged between six and eleven percent (Exh. MECo-10, at 11-12).

¹⁵ The transmission and distribution charges are based on the existing separation of distribution and transmission facilities. In the event that facilities or costs are transferred, appropriate adjustments to the transmission and distribution components would reflect the transfer (Exh. MECo-10, at 10).

¹⁶ The retail delivery tariffs of the Settlement bundled the transmission, distribution, and access charges in one delivery charge on customers' bills (Exh. MECo-1, vol. 1, at 25). The Revised Amended Settlement provides that the access charge would be bundled

not apply to retail customers that arrange for transmission service separately from MECo (Exh. MECo-9, at 7).

with distribution charges (Exh. MECo-10, at 7).

MECo would provide standard offer service for those customers who do not choose a competitive generation supplier on the retail access date (id. at 4). The generating supplies for standard offer service would be obtained by MECo through a competitive solicitation, and standard offer service would be available to all of the Company's retail customers (id. at 15).¹⁷ MECo would provide standard offer service at fixed prices increasing from 2.8 cents per kilowatthour ("KWH") on the retail access date to 5.1 cents, subject to fuel price changes,¹⁸ during a transition period from the retail access date through December 31, 2004 (id. at 8).¹⁹

¹⁷ NEP has proposed to provide to MECo a generating supply for standard offer service at fixed prices increasing from 3.2 cents per KWH on the retail access date to 5.1 cents per KWH, subject to a fuel price index which takes effect after January 1, 2000, during a transition period from the retail access date through December 31, 2004 (Exh. MECo-1, vol. 2, at 12). NEP may bid in the solicitation at prices less than its proposed standard offer supply (id., vol. 2, at 14).

¹⁸ The price for the standard offer service would be subject to a fuel price index which would take effect after January 1, 2000 (Exh. MECo-10, at 16).

¹⁹ Because the generation supply would be determined through a competitive solicitation, the Company would reconcile the revenues received from retail customers taking

Once a competitive supplier is selected, a customer may not return to standard offer service, with the exception that, during the first year after the retail access date, residential and G-1 customers that have taken service from a competitive supplier may return to standard offer service within ninety days of the selection of a competitive supplier (id. at 15). Under the safety-net and basic service provisions of the Revised Amended Settlement, the Company would continue delivery of electricity to consumers who, because they have chosen a competitive supplier, are no longer eligible for standard offer service, and who do not receive service from the competitive supplier, at rates approved by the Department (Exh. MECo-10, at 17-18).

The retail delivery rates, with the standard offer service option, are designed to provide an initial ten percent rate reduction (id. at 9; Exh. MECo-7). The value of the ten percent rate reduction is maintained by capping average revenues per KWH from retail delivery service (with the standard offer) at 8.91 cents per KWH, adjusted for the Consumer Price Index, excluding (1) the fuel price index, (2) adjustments caused by the return on equity floor, and (3) tax law or accounting changes (Exh. MECo-10, at 18-19). The Company will defer amounts necessary to meet the cap and recover the deferrals subject to reductions in the contract termination charge (id. at 19).

standard offer service with payments to suppliers through an adjustment on standard offer customer bills (Exh. MECo-10, at 16-17).

Regarding protections for low-income customers, the Company would continue the low-income discount, and would fund low-income customer DSM programs (id. at 27). In addition, for low-income customers who have chosen a competitive supplier, the Company would implement a program to protect against redlining by paying market suppliers directly, up to the price of the standard offer (id.). The Company would include any unrecovered cost for this service and the low-income discount in the distribution charge (id.).

To provide for the recovery of stranded costs, the Revised Amended Settlement includes a wholesale rate stipulation and agreement,²⁰ and on the retail access date,²¹ MECo would terminate its all-requirements contract with NEP,²² and MECo would pay a contract termination

²⁰ On December 3, 1996, NEP filed the wholesale rate stipulation and agreement with the Federal Energy Regulatory Commission. See ER97-678-000 for MECo and ER97-680-000 for Narragansett Electric Company, MECo's Rhode Island affiliate. The Revised Amended Settlement provides that failure by the Federal Energy Regulatory Commission to approve the wholesale rate stipulation and agreement would render the Revised Amended Settlement null and void, and of no effect (Exh. MECo-10, at 5).

²¹ The Revised Amended Settlement provides that in the event of future regulatory actions, other than actions required by legislative action taken before the retail access date, or legislative actions after the retail access date which may render any part of the Revised Amended Settlement ineffective, MECo and NEP would be held harmless and made whole through rates to MECo's customers (Exh. MECo-10, at 37). The authority of the legislature to enact any law that would resolve the matters covered is not restrained by the Revised Amended Settlement (id.).

²² NEP's rates would remain in effect for service to MECo through the earlier of December 31, 2000, or termination of the all-requirements contract. The contract termination date is defined as the earlier of the retail access date or the date, not before January 1, 1998, on which MECo, at its discretion, terminates purchases under the all-requirements contract. Effective on the contract termination date, NEP would have no further obligation to meet the electricity demand of MECo, except as provided by a separate agreement to provide standard offer service (Exh. MECo-1, vol. 2, at 14).

charge ("CTC") (id. at 4-5).²³ NEP would recover MECo's proportionate share, 72.6 percent, of NEP's total contract termination costs (Exh. MECo-1, vol. 2, at 6). The CTC would apply to all KWH delivered to consumers of electricity in MECo's service area who receive distribution from MECo, whether or not they are current customers of the Company (id.).²⁴ The CTC would be capped at 2.8 cents per KWH, and would be composed of both fixed and variable components (Exhs. MECo-10, at 8; MECo-1, vol. 2, at 48-61).²⁵

²³ MECo would enter into a network integration transmission service agreement for transmission service under NEP's Open Access Transmission Tariff (Exh. MECo-1, vol. 2, at 10). The network integration transmission service agreement incorporates the CTC provision, and in the event MECo is denied the ability to recover the CTC in the access charge for distribution service, NEP proposes to collect the unrecovered balance as a surcharge on any rate paid for transmission service to MECo's service area (id., vol. 2, at 11).

²⁴ The wholesale rate stipulation and agreement excludes the Massachusetts Bay Transportation Authority accounts, for which MECo currently provides unbundled distribution service (Exh. MECo-1, vol. 2, at 6, citing FERC Docket ER94-129-000).

²⁵ The fixed component of the CTC would recover MECo's allocated share of NEP's costs for (1) revenues sufficient to amortize (over a twelve-year period) generating plant balances and regulatory assets; (2) revenues sufficient to provide an overall pre-tax return of 11.18 percent (based on a combined state and federal income tax rate of 39.225 percent); (3) transmission wheeling charges (at prescribed levels) associated with NEP's entitlement to off-system purchases; and (4) the costs independent of operation of NEP's entitlement in Maine Yankee, Vermont Yankee, Millstone 3, and Seabrook, representing operations and maintenance expenses and property taxes for these units that would be incurred prior to the earlier of December 31, 2009 or the expiration of the operating licenses for these units, assuming that these units were to cease operating on December 31, 1997 (Exh. MECo-1, vol. 2, at 48-53).

The variable component of the CTC would recover MECo's allocated share of NEP's costs for (1) nuclear decommissioning and site restoration costs; (2) above-market payments to power suppliers under existing contracts, less the market value realized from the resale of electricity purchased under these contracts; (3) purchased power contract economic buyout payments; (4) credit for unit sales contracts; (5) above-market

fuel transportation costs; (6) payments in lieu of property taxes; (7) employee severance and retraining costs; (8) damages, costs or net recoveries from claims by or against third parties associated with NEP's generating business accrued prior to the date of divestiture; and (9) performance-based rates for nuclear units remaining after divestiture (Exh. MECo-1, vol. 2, at 53-61). The variable component would be adjusted through a reconciliation mechanism for differences between estimates of the Company's allocated payments and actual payments (id., vol. 2, at 54).

By July 1, 1997, NEP would file a plan with both the Department and the Federal Energy Regulatory Commission ("FERC") to implement a divestiture of generation facilities,²⁶ including NEP generation facilities, properties owned by New England Energy Inc., the generating units of Nantucket, and the Narragansett Electric Company's ownership interest in the Manchester Street Station (Exhs. MECo-10, at 29-30; MECo-1, vol. 2, at 15).²⁷ As part of the divestiture, NEP would endeavor to sell, lease, assign, or otherwise dispose of minority shares of nuclear units or entitlements, subject to Nuclear Regulatory Commission approval (Exh. MECo-10, at 29-30). In the event NEP is unable to divest of its nuclear generating units or entitlements, it would implement a performance-based rate to cover the costs of their continued operation (*id.* at 30-31). NEP would also endeavor to sell, assign or otherwise dispose of its purchased power contracts (*id.*). To facilitate the divestiture of NEP's generating facilities, the Revised Amended Settlement provides that NEP may seek FERC approval of market prices for wholesale electricity sales and may make an application for Public Utility

²⁶ The Settlement contained provisions relating to assignment of all or a portion of the CTC and financing approvals to implement the divestiture. In addition, MECo requested authorization from the Department to guarantee full payment to lenders of all or a portion of the CTC and/or to fully indemnify NEP in the event that payments to lenders are not fully covered by the CTC (Exh. MECo-1, vol. 1, at 51; vol. 3, at 234-235). In response to the Department's January 10, 1997 letter indicating concerns about such provisions, the Amended Settlement eliminated the financing provisions relating to assignment of the CTC or financing approvals (Exh. MECo-9, at 32).

²⁷ By July 1, 1997, NEP will also file a plan with the Department to separate its generating business from its transmission business (Exh. MECo-10, at 29).

Holding Company Act exempt wholesale generator ("EWG") status (id. at 34).²⁸

²⁸ By its terms, approval of the Revised Amended Settlement would constitute a finding by the Department that participation of NEP in the market and the designation of each of its facilities as an EWG will benefit consumers, is consistent with existing state laws, will not provide any unfair competitive advantage as a facility owned or formerly owned by NEP, and is in the public interest (Exh. MECo-10, at 34-35).

NEP would apply a residual value credit from the proceeds of the divestiture as a direct offset to the CTC (Exh. MECo-1, vol. 2, at 7).²⁹ To provide an incentive to reduce the CTC by mitigation efforts, the Revised Amended Settlement includes a mitigation incentive mechanism, which would allow NEP to retain a portion of reductions in the CTC, and which through the reconciliation adjustment, would increase the variable component of the CTC when the unadjusted CTC is reduced below the 2.8 cents per KWH cap as a result of the mitigation efforts (id., vol. 2, at 55).

Regarding improved environmental performance, the Revised Amended Settlement also commits NEP, or its successors, to nitrogen oxide and sulphur dioxide emissions reductions at its Brayton Point and Salem Harbor generating facilities (MECo-10, at 24). At the same time, the Revised Amended Settlement does not restrict environmental regulators' authority to impose new environmental standards (id.). Finally, concerning continued DSM funding, the Revised Amended Settlement provides that the Company would develop budgets for DSM programs and renewables for the period 1998 through 2001 at \$66.7 million annually, adjusted for outstanding energy conservation services and conservation cost factors on the retail access date (id.). The DSM programs would include low-income customer residential programs, and the Revised Amended Settlement would provide funding to develop fuel cells and renewables (id.). The Department would decide the appropriate level for ongoing DSM programs and

²⁹ The wholesale rate stipulation and agreement contains an informal dispute resolution procedure to resolve disputes about the calculation of the residual value credit and CTC, and provides for petition to the FERC if a dispute is not resolved informally (Exh. MECo-1, vol. 2, at 7-8).

renewables after December 31, 2001 (id. at 25).³⁰

IV. COMMENTS ON THE SETTLEMENT AND AMENDED SETTLEMENT

The Company, the Attorney General, Associated Industries of Massachusetts, Boston Edison Company, CLF, DOER, NECA, Retailers Association of Massachusetts, The Energy Consortium ("TEC"), and UCS filed comments in support of the Settlement. The Attorney General, the Company, CLF, and DOER state that the Settlement is consistent with the Department's restructuring principles and strikes an appropriate balance among competing interests (Attorney General Initial Brief at 5; Company Initial Brief at 4; CLF Initial Brief at 1-2; DOER Initial Brief at 14).

³⁰ The Settlement also provides that the signatories agree to work cooperatively with interested persons to support certain specific reforms of the existing Energy Facilities Siting Board statute, G.L. c. 164, ' ' 69G through 69R (DOER and the Low-Income Intervenors were not signatories to this provision) (Exh. MECo-10, at 23).

Concerns regarding the Settlement focused on the standard offer service provisions, the ten percent rate reduction, financing provisions, unbundled rate design (including the unbundling of distribution services), the recovery of stranded costs, quality of service and system reliability, and the environmental and renewables provisions. Alternate Power Systems ("APS"), Enron Capital & Trade Resources ("Enron"), Freedom Electric Company ("Freedom"), IRATE, WEPCo, New Energy Ventures ("NEV"), the Unions, and Xenergy raised concerns with the standard offer service provisions. APS, Federated, Freedom, Enron, WEPCo, and Xenergy contended that the standard offer price is understated and will inhibit the development of a competitive generation market, particularly in the initial years (Federated Initial Brief at 11; Freedom Reply Brief at 3; Enron Initial Brief at 7; WEPCo Initial Brief at 2, Xenergy Initial Brief at 2). Enron and Xenergy also contended that the wholesale price of NEP's generation to serve MECo's standard offer customers is too low (Enron Initial Brief at 7; Xenergy Initial Brief at 4). IRATE and the Unions contended that the ten percent rate reduction is illusory (IRATE Initial Brief at 1; Unions Initial Brief at 29).³¹ The Unions also

³¹ In addition to substantive concerns, the Unions raised a concern that the schedule for review of the Settlement did not allow for full development of the restructuring issues resolved by the Settlement. On October 29, 1996, the UWUA requested that the Department establish a schedule that provided for the filing of testimony by proponents of the Settlement, discovery, testimony by intervenors, cross-examination, and briefing (UWUA Initial Comments at 7). The Unions also stated that an extension of a week or two would help in the identification of issues (id.).

On October 30, 1996, the Hearing Officer distributed a proposed procedural schedule that did not contemplate discovery or intervenor testimony. At the November 7, 1996 procedural conference, the Unions, although indicating that they had no issue with respect to understanding the Settlement, submitted a motion to extend the procedural schedule. The parties (including the Unions) agreed upon a revised procedural schedule

which postponed evidentiary hearings, provided for discovery, allowed for intervenor testimony, and extended the briefing schedule. As a result of the extended procedural schedule, the Unions stated that their motion had been resolved (November 7, 1996 Procedural Conference Tr. at 114).

The Department further notes that we opened our investigation into electric industry restructuring on February 10, 1995. On August 16, 1995, the Department stated our principles for a restructured electric industry, and principles for guiding the transition from a regulated to a competitive industry structure. Further, the Settlement resolves issues initially presented in a restructuring filing submitted to the Department on February 16, 1996. On March 15, 1996, the Department commenced a rulemaking on electric industry issues, and on May 1, 1996, the Department issued its proposed rules. The Department solicited comments on its proposed rulemaking on April 12, 1996, May 24, 1996, and August 2, 1996. In addition, the Department conducted 15 days of legislative-style hearings and 16 evening public hearings.

The Department finds that the procedures established to investigate restructuring for the electric industry as a whole, and for MECo in particular, have provided all interested persons with sufficient time and several opportunities to present their views and satisfied

contended that the informal dispute resolution provision of the wholesale rate stipulation and agreement would not allow for meaningful review of disputes that arise (Unions Reply Brief at 2).

due process requirements.

CPC and Intercontinental Energy Corporation ("IEC") raised concerns regarding the financing provisions of the Settlement. CPC and IEC contended that approval of the assignment of all or a portion of the CTC would give lenders a secured interest in portions of the access charges that are unrelated to divestiture (CPC Initial Brief at 7-9; IEC Initial Comments at 2-4).

CPC also contended that the financing provisions of the Settlement are premature (CPC Reply Brief at 4). CPC and NECA filed comments in support of the Amended Settlement.³²

Wheelabrator raised a concern regarding the increased risks to existing creditors of NEP through possible nonpayment or default of a restructured NEP (Wheelabrator Initial Brief at 1).

Wheelabrator stated that the variable component of the CTC should be put into a variable component trust based on amounts owed to trust beneficiaries (*id.*). Wheelabrator suggested, in the alternative, that consideration of the creation of a variable component trust be deferred until NEP files its divestiture plan (Wheelabrator January 21, 1997 Comments at 1).

Shrewsbury Electric Light Plant ("SELP") stated that it has a system power sales agreement involving specific generating units with NEP which would be affected by the

³² On December 10, 1996, CPC submitted a request to present oral argument on whether the Department should approve the financing provisions of the Settlement. On January 21, 1997, after submission of the Amended Settlement, the CPC withdrew its request for oral argument (CPC January 21, 1997 Comments at 1).

Settlement provisions requiring divestiture of generating facilities (SELP Initial Brief at 1-2).³³

SELP requested that the Department safeguard municipal light plants' power contracts (id. at 7).

Federated, the Low-Income Intervenors, and Enron raised concerns with the bundling and rate design of transmission, distribution, and access charges. Federated stated that future increases in transmission costs and decreases in the CTC are allocated on a uniform per KWH basis, and that this would shift costs among and within classes of customers (Federated Initial Brief at 13). Enron contended that the retail delivery rates will require new customers to pay the stranded cost associated with investments that were not incurred on their behalf (Enron Initial Brief at 16). The Low-Income Intervenors contended that the unbundled rates of the retail delivery tariffs submitted with the Amended Settlement undermine the Department's jurisdiction to allocate the costs associated with stranded benefits (e.g., low-income discount and DSM program costs) to transmission-only customers (Low-Income Intervenors January 21, 1997 Comments at 1). Enova, Federated, and NEV contended that the Company should be required to unbundle distribution services without delay (Enova Initial Brief at 2, Federated Initial Brief at 5, NEV Initial Brief at 4).

³³ SELP recognized that its system power sales agreement is regulated by the FERC (SELP Initial Brief at 3).

Federated, Massachusetts Public Interest Research Group ("MassPIRG"),³⁴ Local 464 of the UWUA, and Xenergy contended that the CTC reflected in the Settlement is not appropriate.

Federated and Xenergy contended that the CTC should reflect a residual value credit prior to divestiture (Federated Initial Brief at 7, Xenergy Initial Brief at 6). MassPIRG contended that customers may be unjustifiably burdened by past utility investments (MassPIRG Initial Comments at 1). Local 464 of the UWUA contended that the CTC is understated because the variable component does not include an amount for the mitigation incentive mechanism or values for payments in lieu of property taxes; damages, costs, or net recoveries from claims; performance-based rates for nuclear units remaining after market valuation; and employee severance and retraining costs (Local 464 of the UWUA January 22, 1997 Comments at 11). Local 464 of the UWUA also contended that the Company has included an inappropriate fuel charge in the unbundled rates (id. at 6; Local 464 of the UWUA February 23, 1997 Comments at 1).³⁵

The Unions contended that restructuring of the electric utility industry will result in a reduction in quality of service and system reliability (Unions Initial Brief at 29). The Unions

³⁴ MassPIRG, with other members of the Consumers for Affordable, Clean Electricity, submitted joint initial comments.

³⁵ Local 464 of the UWUA references the typical customer bill information which includes fuel charge adjustments for July 1, 1996 (Local 464 of the UWUA January 22, 1997 Comments at 6, citing Exh. MECo-1, vol. 1, at 73-94, 164-185). The unbundled tariffs provide that the adjustment for the cost of fuel shall be in accordance with the Company's standard fuel clause (Exh. MECo-1, vol. 4, at 4). See G.L. c. 164, ' 94G. The retail delivery tariffs do not include a fuel clause provision (Exh. MECo-1, vol. 4, at 165).

contended that the competitive generation market would not provide adequate reserve margins, and that transmission and distribution reliability will be diminished by reduced investments and maintenance (id. at 33-34).

The Unions also contended that the Settlement does not adequately protect employees who would be adversely affected (id. at 21). The Unions stated that human resources should be valued no less than investment in plant and equipment (id. at 23). The Unions concluded that the amount included in the Settlement to address the "stranded human investment" is inadequate (id. at 27).

CEED raised concerns with the environmental provisions of the Settlement. CEED contended that the emissions reductions provisions would competitively disadvantage the affected generating units, and would be contrary to the Department's policy of excluding the going-forward cost of compliance with environmental requirements (CEED Initial Brief at 6-14). CEED also contended that the renewables provisions of the Settlement would result in above-market prices for renewable resources, and should be eliminated (id. at 26). In addition, CEED opposed any reform of the siting statutes which might result in a preference to clean energy technologies (id. at 27).

V. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department must review the entire record as presented in a company's filing and other record evidence to ensure that the settlement is consistent with Department precedent and the public interest. Berkshire Gas Company, D.P.U. 96-92, at 8 (1996); Boston Gas Company, D.P.U. 96-50, at 7 (Phase I)

(1996); Massachusetts Electric Company, D.P.U. 96-59, at 7 (1996). A settlement among the parties does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. Essex County Gas Company, D.P.U. 96-70, at 5-6 (1996); Fall River Gas Company, D.P.U. 96-60, at 5 (1996).

In assessing whether an electric company's proposed settlement of restructuring issues is consistent with Department precedent, the Department will consider whether the settlement is consistent with the overall goal and principles for restructuring that were established in Electric Industry Restructuring, D.P.U. 95-30 (1995), and affirmed in our December 30, 1996 restructuring plan in D.P.U. 96-100. A settlement's consistency with our goal and principles for restructuring will ensure an outcome that is, on balance, a just and reasonable resolution of restructuring issues for an electric company and its ratepayers, and thus, in the public interest.

In D.P.U. 95-30, the Department stated that the primary objective of the Department's efforts in restructuring is to reduce costs, over time, for all consumers of electricity. The Department's overall goal is to develop an efficient industry structure and regulatory framework that minimize costs to consumers while maintaining safe and reliable electric service with minimum impact on the environment. Id. at 1-2. The Department determined that increasing competition in the generation industry through broad customer choice would be the most effective method to achieve long-term cost reductions. Id. at 2. Accordingly, the Department has initiated a process aimed at promoting the development of a fully competitive market in the supply of electricity.

In D.P.U. 95-30, at 15, the Department stated its principles for a restructured electric

industry:

1. Provide the broadest possible customer choice.
2. Provide all customers with an opportunity to share in the benefits of increased competition.
3. Ensure full and fair competition in generation markets.
4. Functionally separate generation, transmission and distribution services.
5. Provide universal service.
6. Support and further the goals of environmental regulation.
7. Rely on incentive regulation where a fully competitive market cannot exist, or does not yet exist.

The Department also set out principles for guiding the transition from a regulated to a competitive industry structure which identify fundamental conditions for facilitating the transition process and ensuring that the end result benefits customers:

1. Honor existing commitments.
2. Unbundle rates.
3. Seek near-term rate relief.
4. Maintain demand-side management programs.
5. Ensure that the transition is orderly and expeditious, and minimizes customer confusion.

Id. at 29.

The Department acknowledged that, given the complexity of the legal, policy and technical issues in this transition, consensus and settlements are more likely than litigation to advance restructuring. Id. at 46. The Department also stated that negotiation consistent with the restructuring principles would allow stakeholders to strike an appropriate balance among competing interests and achieve an orderly transition. Id. The Department recognizes that the restructuring settlement process is inherently complex and fragile, and involves the agreement of many parties with diverse interests, and we will take these considerations into account in determining whether restructuring settlements provide for resolutions that are, on balance, in the

public interest.

VI. ANALYSIS AND FINDINGS

The Department has evaluated the Revised Amended Settlement provisions for customer choice and consumer protections, including the standard offer and the proposed rate reduction; recovery of stranded costs; divestiture of generating assets and related financing provisions; improved environmental performance and continued funding for DSM programs; and unbundling of generation, transmission and distribution rates in light of the evidentiary record and comments received,³⁶ and the Department's standard of review in terms of the overall goal and principles stated in D.P.U. 95-30, and the restructuring plan in D.P.U. 96-100.

With respect to the Unions' concern that electric industry restructuring will result in a degradation of quality of service or system reliability, the Department notes that one of our explicit goals in restructuring is to maintain safe and reliable service. Our restructuring plan in D.P.U. 96-100 addresses a number of specific mechanisms to achieve this, both in the unregulated generation market and in the regulated transmission and distribution operations.

³⁶ The scope of the current proceeding is limited to issues that are a condition of the Revised Amended Settlement. Issues that are not a condition of the Revised Amended Settlement will be addressed in a second phase of this proceeding. Issues that are not a condition of the Revised Amended Settlement are the terms and conditions under retail delivery rates (Exh. MCo-10, at 18, citing vol. 3, Att. 4); the terms, conditions, and settlement process with suppliers under retail delivery rates (id. at 18, citing vol. 3, Att. 9); regional reform (id. at 28, citing vol. 3, Att. 11); the jurisdictional separation between transmission and distribution (id. at 28, citing vol. 3, Att. 12); and standards of conduct (id. at 35, citing vol. 3, Att. 14). See Interlocutory Order on Appeal by Wheeled Electric Power Company of Hearing Officer Ruling Concerning the Scope of the Proceeding, November 21, 1996. See also Interlocutory Order on Motion for Clarification by Massachusetts Electric Company, December 10, 1996.

The Department will continue to oversee all distribution companies. Any action by a distribution company that jeopardizes reliability is unacceptable, and the Department will exercise its authority over distribution companies to ensure a high level of reliability. D.P.U. 95-30, at 1-2; Electric Industry Restructuring Plan, D.P.U. 96-100, at 32-33, 46-51. There are no provisions in the Revised Amended Settlement that limit the ability of the Department to require MECo and other companies to maintain and improve current standards of service quality and system reliability.

The Revised Amended Settlement allows all of the Company's customers to choose their electricity supplier on the retail access date. This is consistent with the Department's principles to provide the broadest possible customer choice and to provide an opportunity for all customers to share in the benefits of competition. The standard offer provisions included in the Revised Amended Settlement also provide for a reasonable transition to a competitive market that affords important consumer protections. Through the standard offer service, safety-net service, basic service, and the low-income customer provisions, the Revised Amended Settlement is consistent with the Department's principle to provide universal service.

For standard offer service customers, the Revised Amended Settlement provides for an initial ten percent rate reduction compared to the existing rates under the current regulatory framework. The rates would be subject to adjustments to the standard offer service prices and increases to the retail delivery tariffs. Commencing on January 1, 2000, the standard offer service would be adjusted to reflect a fuel price index. Increases to the retail delivery tariffs from the retail access date through December 31, 2000 would be limited to (1) distribution

charge adjustments to reflect the return on equity floor, and tax law and accounting changes, and (2) transmission cost adjustments to cover the costs that NEP bills to the Company.

Because these increases might also be allowed under the current regulatory framework, a reduction from rates that customers would otherwise pay is maintained. Therefore, the Revised Amended Settlement is consistent with the Department's restructuring principle to provide near-term rate relief.

The design of the standard offer service presents an approach that seeks to reconcile several competing policy objectives. Through the establishment of the initial ten percent rate reduction, it meets the Department's objective of providing near-term rate relief. At the same time, through the establishment of scheduled annual increases in the standard offer price, the design provides a progressively greater incentive over time for customers to participate in the competitive generation marketplace.

The Department recognizes the concerns of some commenters that the design of the standard offer service may induce many customers, initially, to remain with the Company, and therefore undermine some of our goals for restructuring. We do not, however, believe that this result would violate our goals in restructuring, for several reasons. First, the design of standard offer service will ensure that even non-participants in the competitive market see benefits from restructuring, i.e., reduced rates. This is consistent with the Department's principles of providing near-term rate relief and assuring benefits for all classes of customers. Second, this design avoids the need for all customers to exercise choice immediately. This approach will prevent, in large measure, the kinds of confusion and anxiety that have attended previous efforts

at promoting competition, a concern that was frequently cited by consumers during the Department's public hearings in D.P.U. 96-100. Third, the price-cap approach to the design of standard offer service provides an appropriate inducement for the Company to obtain generation supplies to serve standard offer customers at the lowest possible price. This design will, therefore, foster the further development of competition in the bulk power market. Fourth, the design of standard offer service will lead to a progressive increase in competition as the standard offer price ceiling rises, and any short-term impairment to competition will be cured over time. Fifth, the concerns of some commenters that the design of standard offer service will afford an unfair marketing advantage to the Company's marketing affiliate is not well-founded. The Department's Standards of Conduct, 220 C.M.R. ' 12.03(11), will prohibit the Company from promoting or marketing the services of its affiliated competitive supplier.³⁷ For all of these reasons, the Department finds that MECo's proposal for standard offer service is consistent with the Department's restructuring goals principles and, on balance, reasonable.

³⁷ See Standards of Conduct Rulemaking, D.P.U. 96-44 (1996).

The amount of stranded costs to be recovered is, by its nature, not subject to a precise determination at this time. Because there is uncertainty in determining the amount of stranded costs to be recovered, the Department's focus in D.P.U. 96-100 was on a method that would ensure that the accounting for embedded costs would be accurate and that mitigation would be maximized, resulting in a level of stranded costs to be recovered from ratepayers that would be just and reasonable. The Department has evaluated the Revised Amended Settlement in terms of the method established for stranded cost determination in the Department's restructuring plan. Specifically, the Department reviewed how the Revised Amended Settlement provides for calculation of embedded costs, mitigation, crediting of residual value and reconciliation to changes in the market price.³⁸ The Department finds that the Company's CTC method is

³⁸ The CTC also provides for recovery of costs associated with nuclear decommissioning and site restoration; above-market payments to power suppliers; credit for unit sales contracts; above-market fuel transportation; payments in lieu of property taxes; damages,

costs, or net recoveries from claims from third persons; performance-based rates for nuclear units remaining after market valuation; and employee severance and retraining. The amount determined to be reasonable for these costs would be included in the variable component of the CTC. While the wholesale rate stipulation and agreement provides a mechanism for recovery of these costs, the Settlement recognizes that these amounts are variable and have not been determined. Actual values for these costs would be collected through the reconciliation adjustment, subject to the 2.8 cents per KWH CTC cap and the deferral provisions. The reasonableness of these costs is subject to the informal dispute resolution procedures of the wholesale rate stipulation and agreement, and petition to the FERC if a dispute is not resolved informally. The Company states that the informal dispute resolution procedures and petition to the FERC

consistent with the goals of the Department's proposal in D.P.U. 96-100.

are available to persons affected by any reconciliation adjustment (Tr. 1, at 146-147; Tr. 4, at 286-288).

While providing assurances for the recovery of stranded costs, the Revised Amended Settlement also incorporates provisions to mitigate these costs. The Revised Amended Settlement provides for a maximum rate of CTC recovery of 2.8 cents per KWH. The Revised Amended Settlement provides for voluntary divestiture of generation assets,³⁹ with a return of the proceeds from divestiture to customers as a credit against stranded costs. Proceeds from the divestiture of NEP's generating facilities, together with renegotiation of power purchase contracts,⁴⁰ would provide an opportunity for significant reductions to the total amount that would otherwise be collected through the CTC.⁴¹ Moreover, the wholesale rate stipulation and agreement would reduce the CTC significantly more than would a determination of this charge pursuant to the FERC's method for calculation of stranded costs.⁴² Therefore, the Revised Amended Settlement's provisions for the recovery of the CTC are consistent with the

³⁹ SELP's concern that the Settlement provisions requiring divestiture of generating facilities would affect SELP's agreement is more appropriately a matter for the FERC, which has jurisdiction over that agreement.

⁴⁰ The mitigation incentive mechanism (see p. 13-14, above) is associated primarily with divestiture of NEP's generating units and reductions in purchased power costs.

⁴¹ Mitigation of the CTC through methods such as divestiture would reduce or eliminate the need for deferrals because payments to suppliers for standard offer service could be collected, subject to the 2.8 cents per KWH CTC cap, from existing customers taking standard offer service.

⁴² See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888 ("Order 888"), at 442 (1996). While the precise stranded cost amount cannot be determined at this time, the Department notes that under the FERC's lost revenue approach, the present value of the projected stranded cost amount is \$312 million higher than under the CTC provisions of the Settlement, unadjusted for the residual value credit or changes to the variable component. See Company Initial Brief at 10, citing RR-DPU-1 and RR-DPU-2.

Department's restructuring principle to honor existing commitments, while requiring maximum mitigation of the stranded costs.

In response to the Department's January 10, 1997 letter, which indicated a concern with the Settlement's financing provisions, the Amended Settlement deletes the financing provisions of the Settlement and indicates that requests for financing approvals would be submitted with the July 1, 1997 divestiture plan. The Department recognizes that the financing requirements needed to implement a divestiture plan are not known at this time and would depend on the proceeds of the sales and the structure of the transactions. The Amended Settlement has also removed the provision for assignment of the Company's portion of the CTC payable to NEP; this issue and is therefore not before the Department at this time, or addressed in this Order. Assignment by NEP of all or a portion of the proceeds from the CTC is not provided for by the wholesale rate stipulation and agreement.

The Revised Amended Settlement provisions for emissions reduction requirements at NEP's Brayton Point and Salem Harbor generating facilities represent improvements to environmental performance. The units would also remain subject to any future environmental regulations. In addition, the budgets for DSM programs and renewables for the period 1998 through 2001 represent a commitment to maintaining conservation programs and supporting clean emerging technologies. In light of these provisions, the Department finds that the Revised Amended Settlement is consistent with our principles that restructuring should support and further the goals of environmental regulation and maintain DSM programs.

The retail delivery tariffs of the Revised Amended Settlement, in addition to an

unbundled energy charge for the generation component, unbundle transmission charges from distribution and access charges.⁴³ To accomplish this, the retail delivery tariffs provide a transmission service cost adjustment that would apply to retail customers, except those who have separately arranged for transmission service. For all retail sales, however, there is an element of distribution, and the access charge is nonbypassable.⁴⁴ The Department finds that

⁴³ The Department will allow, as the result of this Settlement, the bundling of charges for local distribution service and the general access charge on customers' monthly bills; however, the Company must provide information regarding the access charge to customers on a regular basis.

⁴⁴ This is consistent with the FERC's position that, regardless of the determination of transmission and distribution facilities, and even where a retail transaction does not involve identifiable distribution facilities, every transaction involves distribution service,

the retail delivery tariffs of the Revised Amended Settlement are therefore consistent with the Department's restructuring principle to unbundle generation, transmission, and distribution services.

and states have jurisdiction over the provision of distribution service. Order 888, at 433-436.

With respect to the unbundled tariffs, M.D.P.U. Nos. 945-A through 951-A, 952 through 957, 958-A through 961-A, 962, and 963 of Massachusetts Electric Company; and M.D.P.U. Nos. 392, and 399 through 409 of Nantucket Electric Company, the Department directs the Company to submit, by March 3, 1997, revised tariffs with two changes: (1) replace the effective date of January 1, 1997 with an effective date of July 1, 1997,⁴⁵ and (2) replace the term "wires charge per KWH" with the term "distribution charge per KWH".

With respect to the retail delivery tariffs, M.D.P.U. Nos 964-A through 974-A, 975, 976, 977-A, and 978 of Massachusetts Electric Company; and M.D.P.U. Nos. 410 through 422 of Nantucket Electric Company, the Department directs the Company to submit revised tariffs with two changes: (1) replace the January 1, 1998 effective date with the term "Retail Access Date", and (2) replace the term "wires charge per KWH" with the term "distribution charge per KWH". Should MECo propose to implement retail access for its customers prior to the date when retail access is made available to all customers of investor-owned electric companies in Massachusetts, the Company should, no later than ninety days before the proposed retail access date, submit the retail delivery tariffs with a revised effective date for Department approval.

⁴⁵ See February 14, 1997 Letter, fn.1 from the Department regarding formats and deadlines for implementation for March 3, 1997 filings of unbundled bills pursuant to D.P.U. 96-100.

No later than ninety days before the retail access date, the Company shall submit proposed rates, terms, and conditions for safety-net and basic service for review by the Department.

In conclusion, the Department finds that the conditions of the Revised Amended Settlement before us for approval are consistent with (1) our primary objective to reduce costs, over time, for all consumers of electricity, (2) our goal to develop an efficient industry structure and regulatory framework that minimize costs to consumers while maintaining safe and reliable electric service with minimum impact on the environment, and (3) the Department's electric industry restructuring principles and proposal. Therefore, the Department finds that the conditions of the Revised Amended Settlement represent, on balance, a just and reasonable resolution of restructuring issues for the Company and its ratepayers, and thus, are in the public interest.⁴⁶ Accordingly, pursuant to our authority to regulate the operations of the electric utility

⁴⁶ As noted, failure by the FERC to approve the wholesale rate stipulation and agreement would render the Revised Amended Settlement null and void, and of no effect. Approval of the Revised Amended Settlement, unless otherwise agreed to by the Department, is limited to the wholesale rate stipulation and agreement, as filed. FERC approval of provisions to the wholesale rate stipulation and agreement other than as filed with the Department, must be submitted for Department review.

companies in Massachusetts under G.L. c. 164, §§ 76 and 94,⁴⁷ the Department approves the following provisions, which are conditions of the Revised Amended Settlement:

⁴⁷ See also D.P.U. 96-100 (December 30, 1996) at 22-23 n. 16, n. 17, 231-234, 264-268; D.P.U. 95-30, at 33-34, 40-44.

- ' I. Price Reductions for All Customers, including (A) the unbundling of rates through the retail access date, (B) retail delivery rates and the standard offer effective from the retail access date through December 31, 2004,⁴⁸ and (C) the right to file for a rate change in the event that the retail access date has not occurred by January 1, 2001;
- ' II. Benefits of Competition Extended to All Customers, provisions for (A) prior commitments with customers, and (B) the implementation of retail access;
- ' III. Protect the Environment and Promote Conservation, including (A) siting reform,⁴⁹ (B) emissions reductions, and (C) conservation and load management, and renewables;
- ' IV. Protect Low-Income Customers, including the continuance of the low-income customer discount, funding of low-income customer DSM programs, and protection against redlining;
- ' V. Creation of a Fully Functioning Stable and Reliable Structure for the Competitive Market provisions that include (C) the separation of generation and transmission properties and facilities, (D) divestiture of NEP's generating facilities, and (G) unbundled distribution services;⁵⁰

⁴⁸ The Department does not act, at this time, on the terms and conditions under retail delivery rates (Exh. MECo-1, vol. 3, Att. 4), and the terms, conditions, and settlement process with suppliers under retail delivery rates (*id.* Att. 9, see also ' V. Creation of a Fully Functioning Stable and Reliable Structure for the Competitive Market (F) customer service standards). These are not conditions of the Revised Amended Settlement. These two issues will be addressed in the second phase of this proceeding. The performance standards under retail delivery rates are binding on the Company, unless generic standards that are more stringent are approved by the Department (November 7, 1996 Procedural Conference, Tr. at 21-22, citing Exh. MECo-1, vol. 3, Att. 7).

⁴⁹ The Department's approval does not constitute an endorsement of any specific siting reform, but rather approval of the commitment of certain signatories to the Revised Amended Settlement to make best efforts to reach further agreement on legislative amendments to update the existing Energy Facilities Siting Board statute, G.L. c. 164, '' 69G through 69R.

⁵⁰ The Department does not act, at this time, on the provisions of ' V. that include (A) regional reform (Exh. MECo-10, at 28, citing Exh. MECo-1, vol. 3, Att. 11), (B) the jurisdictional separation between transmission and distribution (*id.* citing Exh. MECo-1, vol. 3, Att. 12), (E) standards of conduct (*id.* at 35, citing Exh. MECo-1, vol. 3, Att. 14), and (F) customer service standards (*id.*). These are not conditions of the Revised Amended Settlement. These issues will be addressed in the second phase of

- ' VI. Successors and Assigns, including the rights and obligations imposed on any signatory to the Revised Amended Settlement;
- ' VII. Additional Provisions, concerning the protection of settlement negotiations and the precedential effect of the Revised Amended Settlement.

The Department notes that our acceptance of the Revised Amended Settlement does not result in a finding on the merits of any issue outside the context of the Revised Amended Settlement and does not set a precedent for future restructuring filings, whether ultimately adjudicated or settled.

this proceeding.

VII. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the tariffs, M.D.P.U. Nos 945 through 978 for Massachusetts Electric Company, and M.D.P.U. Nos. 355 through 375 for Nantucket Electric Company submitted on October 1, 1996, be and hereby are DISALLOWED; and it is

FURTHER ORDERED: That the tariffs, M.D.P.U. Nos. 945-A through 951-A, 952 through 957, 958-A through 961-A, 962, 963, 964-A through 974-A, 975, 976, 977-A, and 978 for Massachusetts Electric Company, and M.D.P.U. Nos. 410 through 422 for Nantucket Electric Company submitted on January 15, 1997, be and hereby are DISALLOWED; and it is

FURTHER ORDERED: That the provisions of the Revised Amended Settlement listed as conditions in Section VI, submitted to the Department on February 13, 1997, be and hereby are APPROVED; and it is

FURTHER ORDERED: That the tariffs of Massachusetts Electric Company and Nantucket Electric Company for unbundled electric service shall apply to electric service consumed on or after July 1, 1997, and shall not become effective until a filing that demonstrates that such tariffs comply with this Order has been approved by the Department, unless otherwise ordered by the Department; and it is

FURTHER ORDERED: That the tariffs of Massachusetts Electric Company and Nantucket Electric Company for retail delivery service shall apply to electric service consumed on or after the retail access date, and, unless otherwise ordered by the Department, shall not become effective until a filing that demonstrates that such tariffs comply with this Order has

been approved by the Department; and it is

FURTHER ORDERED: That Massachusetts Electric Company shall comply with all orders and directives contained herein.

By Order of the Department,

John B. Howe, Chairman

Janet Gail Besser, Commissioner